IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 408 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AKHATAR JAHA W/O RASHID IBRAHIM
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 408 of 1999
MR JM BUDDHBHATTI for Appellant No.
THROUGH JAIL for Appellant No.
MR IM PANDYA ADDL PP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 23/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. The appellant original accused through jail has filed this appeal and challenged the order of conviction and sentence recorded by the learned Additional Sessions Judge, Court No. 10, Ahmedabad dated 17th March, 1998, convicting the appellant for the offences under Section 8 (C) read with Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "NDPS" Act while disposing of Sessions Case No. 173 of 1997. After convicting the accused and after hearing on the point of sentence, the learned trial Judge has imposed sentence of RI for 10 years and fine of Rs.1 lacs and in default of fine, further RI for 1 year and granted set off.

2. As per order dated 9.8.2002, while admitting the appeal, the Court had expedited the hearing of the appeal and Mr. M.J. Buddhbhatti was appointed as an advocate to represent the appellant in this matter. Accordingly, this matter is reached for hearing before us today and Mr. Buddhbhatti, learned advocate appearing for the appellant has taken us through the evidence recorded during the trial namely the FIR, Panchnama and FSL report etc. and the judgement under challenge.

3. Mr. Buddhbhatti while arguing the appeal has vehemently urged and contended before us that reading the entire evidence of the prosecution witnesses and as the star witness of the prosecution PW - 1 Shri Krushnakumar M. Gohil, who was at the relevant time working as PSI with DCB Crimes and who received the secret information in the matter, has not reduced the said information, which he has received from his informant at 1-00 PM and further that, the information which he has received is not immediately conveyed by him to his superior officer. To demonstrate his contention, he has taken us through the evidence of Shri Gohil PW-1 as well as the documents which were brought by the prosecution on the record and the information which has been proved on the record, is admittedly is the document which is recorded in the station diary at 15-00 hrs, which is at Ex. 8. In light of this evidence, it is the contention of Mr. Buddhbhatti that as found from the evidence of Shri Gohil PW-1 that the information was received by him at 1-00 PM is not reduced to him immediately and the information, which is found in the station diary Ex. 8 is admittedly recorded at 15-00 hrs (3-00 PM). He has also submitted that Shri Gohil, PSI has not conveyed about the secret

information to his superior officer immediately and he has placed reliance upon the Ex. 9 recorded in the report submitted by Shri Gohil to the Assistant Police Commissioner, Ahmedabad Crime Branch and it does not bear any timing. His next contention is that as found from the evidence, there is no sealing on the muddamal when the muddamal in question were seized from the appellant accused at the time of raid and the muddamal narcotic substance with currency note of Rs.535=00 is handed over by PW-1 Shri Gohil in the Police Station. As admitted by the witness that he has not applied the second seal and on these grounds, the conviction recorded by the learned trial Judge is fetal and prayed for acquittal of the accused. Mr. Buddhbhatti has also while taking us through the statement under Section 313 recorded by the learned trial Judge after the evidence was concluded, he has highlighted that even when the accused was asked to say anything further, there is noting on the record, which suggests that the appellant accused was not knowing Gujarati and the questions posed to the accused in Hindi and answer was accordingly recorded in Gujarati. According to Mr. Buddhbhatti considering this back ground, it is very clear that in light of the evidence led by the prosecution when the raid was carried out and as alleged by the prosecution that narcotic substance was seized from the possession of the accused, she was not asked that whether search is to be carried out in presence of Gazetted officer or Magistrate and no such question has been posed, which is mandatory under the NDPS Act and therefore, the conviction recorded by the learned trial Judge is deserve to be set aside.

4. Mr. I.M. Pandya, learned Addl. P.P. has supported the judgement under challenge. According to him that as established from the evidence of PW-1 Shri Gohil was the PSI working in DCB Crime Branch on that day i.e. on 8.5.1997 and as per the information received from the informant at 11=00 AM about selling of Narcotic substance by one lady. The said information was also verified by said Gohil personally and it is only after he satisfied about the correctness of the information, he has carried out the raid by calling the panchas and as per the information that one lady is selling narcotic substance, in the raiding party, one lady constable was also kept. As per the evidence of members of raiding party with panchas and as established from the evidence of Shri Gohil that immediately after they proceeded for raid at 3-00 p.m., the entry was made in the station diary and report was furnished to the higher authority Ex. 9.

5. He has submitted that so far as the muddamal narcotic substance which was seized, amply established that there is nothing to indicate from the cross examination of witnesses that the narcotic substance, which was seized from the accused was not in fact by making some attempt to involved the lady in a serious offence. He accordingly submitted that even the panchnama and the statement of panchas, who acted as panchas also very clear that after inquiry with the lady about being searched in presence of any Magistrate or Gazetted Officer and it is only when she has declined, the lady constable has carried out the search of the appellant accused and the narcotic substance were found. He has further submitted that the raiding party has properly sealed the muddamal articles and thereafter the accused and muddamal were brought to the police station and thereafter the muddamal in question was entrusted to the officers in the police station and the same was received by the Police Officer and the said Muddamal was sent for FSL and as per the report of the FSL, it was established that muddamal is a narcotic substance. Mr. Pandya has also submitted that accused was represented through an advocate and even the evidence, which was recorded before the trial Court, wherein the advocate for the accused had thoroughly examined all the witnesses and it is only at belated stage, this noting was placed that the lady was asked further questions under Section 313 of the Cr.P.C. It was noted that question was posed to the lady in Hindi and answer was recorded in Gujarati, as if lady was not knowing Gujarati. Mr. Pandya has accordingly urged that this is a fully proved case that from the possession of the appellant accused a large quantity of brown sugar found containing 33 small packets of brown sugar of 2005 ml. and currency notes of Rs.535, which proves that she is selling the brown sugar and prayed for dismissal of the appeal.

6. In light of the contentions raised before us, we have to examine that whether the learned trial Judge has committed any error in convicting the appellant accused or not and accordingly, in brief, we will discuss the evidence led by the prosecution.

7. The prosecution has examined PW-1 Krushnakumar Mahipatsinh Gohil, who was at the relevant time working as PSI at DCB Narcotic Cell, who received information from the informant when he was in the police station at 1-00 PM. As found from his evidence that he received information through his informant about the selling of Narcotic substance by a lady in the area and he himself has verified the place and thereafter, the necessary

entry is made in the station diary. He has called for securing panchas by deputing Vinayakbhai - Police Constable and as the information is to the effect that one lady is selling the narcotic substance, he has along with raiding party taken help of one lady constable. The evidence further revelled that on the way the witness has taken one gold smith with them and all the members of the raiding party including Smt. Dhaniben - lady head constable got down at the end of Khokhra bridge and they walked for about 15 minutes and they show that one lady was sitting on a cot below the tree having buff cut heir, wearing black shirt and surwal with Duppata and the raiding party has cordon her. The inquiry was made to that lady. She disclosed her name as Akhtarjaha. Thereafter, Dhaniben Lady Head Constable has carried out search and prior to search, the accused was informed that whether she wants to be carried out search by keeping present any gazetted officer or magistrate and she has in writing declined such presence of any gazetted officer or magistrate during search and thereafter the search was carried out. During search, 33 small packets of brown sugar were seized having contained brown powder, which was collected. It was also tested by the officer Shri Gohil with the key bag and it was found that the said substance is brown sugar. Thereafter all the samples were gathered in one plastic bag and they have weighted that bag and on weighting it was found that the brown sugar is 2455 ml. including paper and the brown sugar is of 200 ml. gram. Thereafter, seal was applied to the bag. The same were packed in brown paper, tide with thread and after obtaining signatures from the witnesses, slip was also applied. The panchnama to that effect was also made. The seizure memo was also prepared. They have also seized cash amount of Rs.535=00 which was recovered from the accused. Thereafter all the muddamal along with currency notes were sealed in a packet. They have obtained signature of the accused on the seizure memo. The accused was also served with the memo of arrest and the husband of the accused was also communicated about the arrest of the accused.

7.1. In the cross-examination nothing much is found. However, the witness Gohil has admitted that he is not gazetted officer and no gazetted officer was present during raid. It is further found from his cross-examination that they have no sufficient time to call for any gazetted officer namely the Inspector to accompany with him during the raid. In the cross-examination, Shri Gohil has admitted that he has made entry in the police diary at 3-00 PM and he has further admitted that information which he has received

at 1-00 PM, he has not made any entry in the police diary or any where. He has admitted that in the entry which he has made in the station diary, there is no name of the accused. It is further found from his cross-examination that at the time when he has effected raid on the accused, he has not seen any customer or accused selling narcotic substance. After the information was received through his informant, he went for verification about such information along with informant and when he has inquired, at that time, the accused was sitting there and no other customers were seen nearby her. He has admitted that when he went for inquiry about the information, he could have effected the raid. As found from his cross-examination that the area from which the lady was found is situated near railway colony and there are quarters of railway employees but no statements of any person residing in that quarters is made and he has not made any search of residential house of the accused. It is not correct to say that accused was asked that whether she wanted herself to be searched by any gazetted officer or by any magistrate. In the cross-examination, he has submitted that she has declined the presence of any gazetted officer or magistrate. He has denied the suggestion that sealing was not applied at the time when the search was carried out and muddamal substance was found and further denied that the panchas have signed the panchnama in the police station and he has filed this false case against the accused.

8. PW-2 Prakashbhai Natubhai, who acted as a panchas, in turn has deposed that on 8th May, 1997 at about 2-45 PM when he was proceeded near Jamalpur Circle, he was called by the police and he has also shown his willingness to act as a panch. The police has also called another panch namely Ramanbhai. He was also friend of Prakashbhai. He has deposed in his deposition that he was informed that as per the information received by Shri Gohil, he was to join as panch in a raid, where one woman is selling narcotic substance. He has also explained about the narcotic substance in question, which was found from the search of an accused having 33 small packets containing 200 ml. gram brown sugar. The said narcotic substance was seized and same was tested by the officer and it was found to be a narcotic substance and the same was sealed and tide with thread and the panchas have also put their signature. He has also identified the accused in the court, who is having narcotic substance.

8.1. In the cross-examination, he has deposed that he is doing the business of fabrication. He has deposed

that he knows Ramanbhai since three years and he used to close his factory on every Sunday or Thursday being a staggering day. On the day of incident, he along with his friend left his house at 1-00 PM. On the way, they hired rickshaw. In the cross-examination. he has deposed that members of the raiding party were not in uniform including the lady constable. They were all in civil uniform. In the cross-examination, he has deposed that muddamal packets were found from the accused. The same were sealed and it took about 10 minutes. He has given four signatures and no other signatures he has made. According to him that he has put his two signatures on the two papers and one signature in one slip. He has denied the suggestion that while giving evidence, the police has informed him that he should identify the accused and substance, which was found, which was seized from the accused, for which, he has to deposed before the Court. However, he has denied that he is not deposing falsely and further that as police persons are known to him and accordingly, he is deposing against the accused.

9. The evidence of PW-3 Dashrathsinh Gambhirsinh Police Head Constable is recorded at Ex. 19. From his evidence, it is found that he was one of the members of the raiding party. He was working in the Narcotic cell. On 8.5.1997, he was on duty in the crime branch and Mr. Gohil, Police Sub-Inspector has received the information, which he was informed. The information was that one lady having buff cut hair, wearing black colour shirt and surval and duppata is selling the illegal brown sugar by sitting on the cot below the tree at Khokhra Railway colony. This information was also examined by Shri Gohil as well as by the witness and as found in truth in the said information, Vinayak, the Police Constable was deputed by Shri Gohil for calling the panchas. Thereafter, panchas were came and Shri Gohil has apprise them about the information. Thereafter, the Superior Officer was informed in writing and he along with other raiding members of the party with panchas had proceeded in a Government Jeep, where the vehicle was stopped near Jamalpur Fire Brigade, where Shri Gohil has summoned one person with the weighting machine and the said person was also apprised about the information by Shri Gohil and they all proceeded further upto Khokhra bridge. At the other hand of Khokhra bridge, the vehicle was stopped and panchas and other raiding staff got down and proceeded by walking. He has deposed that they saw one lady was sitting on a cot under the tree and Gohilsaheb has shown us that lady and thereafter they proceeded towards that lady. Gohilsaheb has asked name of that lady in presence

of panchas. He further deposed that from the possession of that lady 33 small packets (Padiki) were recovered. Before taking search, Shri Gohilsaheb has given identification to the lady that they are persons from the Narcotic cell and he is PSI, while others are his staff members. Shri Gohil has also inquired from the lady that whether she intent to take search of any of the members of the raiding party, which the lady had declined. Mr. Gohil has also inquired from that lady that whether she intend to call for any gazetted officer or any Magistrate during search, which also the lady had declined and when the packets were found from the possession of the lady, it was opened and it was found containing brown sugar powder, which was smelled. It was also informed to the accused. The said substance was also weight by Shri Gohil with the scale, which they brought with kit and it was confirmed that the substance was narcotic substance and the weight of that substance is 2400 ml. gram without paper and with paper it was weight 4400 ml. Thereafter, hit seal was applied to that substance. Thereafter the said bag was kept in one tin and it was also sealed. They have also seized currency notes of Rs.535 from the lady. He has deposed that panchnama to that effect was drawn. The witness has also identified the said accused in the court as well as he has also identified the muddamal.

9.1. In the cross-examination, it is found from his evidence that he has admitted that he came on duty at 10-00 AM. At that time, he has not received any information but the information was received by Mr. Gohil. He was not present when the information was received by Shri Gohil. Shri Gohil, PSI, informed him about the information at about 11-00 AM and apprised him about the information in detail. He has further deposed in the cross-examination that to inquiry with regard to the information, he alone gone in his own vehicle and left the police station at about 11-50 AM and he reached at the place of information at about 11-45 hrs. and he remained there for an about one hour. During this period, he has not seen any person purchasing any substance and during this period of one hour, he was standing at a distance of the accused. The seizure memo Ex. 11 was served on the accused. He has further deposed in his cross-examination that he cannot say that in whose hand writing this seizure memo is. On the said seizure memo, there is a thumb impression and the witness has stated that on drawing the said seizure memo, the hand writing and thumb impression is of different hand writing. However, he could not say that whose hand writing is this. He has denied that no seizure memo Ex.

11 is given to the accused at the place. He has also stated that he has not stated in his statement that after 11-00 AM he had gone to verify about the information and he remained there for about one hour. It is also found that according to him that during one hour from 11-00 AM, till they proceeded for raid, Shri PSI Gohil could not called any superior officer. He has deposed that he was also present, when Shri Gohil has asked Shri Vinayak for calling the panchas. He was also posed question for raid applied at Khokhra Bridge and they proceeded by walk after walking about 15 minutes. He deposed that seal on the substance was done by the members of the staff, however, he could not remember the name of the person who has sealed the substance. He has denied that he had not gone to raid and no panchnama was drawn and he has deposed falsely that 33 small packets were seized, which he had deposed falsely. He could not also say that whose hand writing is there on the complaint and the panchnama. He has denied that to support the complainant, he has deposed before the court and further denied that it is not correct to say that nothing was found from the accused.

10. Bismillakhan Abaskhan PW-4 is examined at Ex. 20. He has deposed that he was working with D.C.B. Police Station, Ahmedabad since last 9 months. He was on duty as a PSO. He has deposed that PSI has submitted report under Section 157 and on the strength of the said report, he has registered the offence in the station diary. This entry is made by him in the station diary, which is at Ex. 21. Shri Gohil, PSI has handed over the muddamal which was in sealed condition and the said muddamal is handed over to the writer head constable in the same condition. This muddamal is in two packets and cash amount of Rs.535.

10.1. In the cross-examination, he has admitted that after the muddamal, which he has received from Shri Gohil in sealed condition, he has not applied another seal. After the muddamal was received by him, thereafter, he has registered the offence and after 20 minutes, the muddamal which he has received from Shri Gohil is handed over to crime writer. He has not obtained any signature of the writer head constable about the muddamal. He has denied that it is not correct to say that he has not received any muddamal and he has deposed falsely.

11. Vinayak Laxmanbhai PW-5 is examined by the prosecution at Ex. 22. He has deposed that he was working in the DCB as Police Constable since last about two years and he is also member of the raiding party. As

found from his deposition, the prosecution has examined him only for the purpose that whether he has received any muddamal in question from the writer head constable in sealed condition on 9.5.1997 and he has handed over the said muddamal before the FSL and having receiving the Muddamal, a receipt was given by the officer of the FSL. This receipt is also produced by him at Ex. 23. In the cross-examination, it is found that in Ex. 23, there is no signature nor even his signature is found. He has deposed that in the receipt, CR number is written and accordingly, he says that this is a receipt of receiving muddamal. He has denied that he has not gone to hand over the muddamal before the FSL.

12. Gopalbhai Ramabhai is examined by the prosecution at Ex. 24. He has deposed that he was working as Crime Writer Head in the DCB Crime. He has deposed that whatever muddamal which received in the police station, his duty was to keep this muddamal in safe custody and maintain the register. He has deposed that the muddamal in question under CR. No. 19 of 1997 was handed over by PSO Bismillakhan on 8.5.1997. The muddamal consisting of two sealed packets and currency notes of Rs.535. The entry is also made in the reserve register at Sr.No. 22, which is in his own hand writing and the muddamal, which he has received, is in sealed condition and on the next day the muddamal in question was entrusted to Police Constable Vinayakbhai for handing over the same before the FSL and he has obtained the signature of Vinayakbhai Police Constable having received the muddamal. He has identified the signature on the said receipt. He has deposed that on 29th July, 1997, the muddamal was brought back from FSL by Vikramsinh Chandansinh. He has also proved the signature as well as acknowledgment.

12.1. In the cross-examination, the witness has stated that when the muddamal was handed over, at that time, there was no seal of the PSO and further admitted that in the register, no time is mentioned that at what time, the muddamal was received by him. He has denied that no muddamal was entrusted to him and further denied that signature of Vinayak and Vikrambhai before PSO is not his signature.

13. Ahmedkhan Firozkhan Sindhi PW-7 is examined by the prosecution at Ex. 26, he is Investigating Officer of the case. He has deposed in his deposition that further investigation of CR. No. 19 of 1997 in respect of the raid carried out by PSI Shri Gohil was entrusted to him, by which, he has received all the papers about the raid including the complaint filed by Shri Gohil and

the report submitted by him under Section 157 and the muddamal. He has also recorded the statements of Police Officers, who are the members of the raiding party and other witnesses. The muddamal in question was sent for examination before the FSL by issuing letter signed by him. He has proved the letter. The report from the FSL was also received in respect of the muddamal. The chargesheet was submitted by Shri Gohil, P.S.I.

13.1. In the cross-examination, he has deposed that when he has taken over the investigation at that time, the Panchnama, complaint, memo of seizure, arrest memo and other papers were received by him. He has denied that it is not correct to say that he has by his own taken down the statement of all the members of the raiding party on the strength of the complaint. He has denied that false chargesheet is filed and no such incident was occurred and he has no personal information about the case.

14. The defence of accused is of total denial as found from the statement recorded under Section 313 of the Criminal Procedure Code vide Ex. 2.

15. The learned trial Judge has on appreciating these evidence and in light of the defence of the accused and further in light of the provisions of the N.D.P.S. Act and the decisions, which were cited before him has held that the prosecution has proved their evidence beyond reasonable doubt that the brown sugar of 2005 mg. in quantity was seized and found from the accused and her possession. The learned Judge has discussed the evidence of the prosecution witnesses as well as the documentary evidence and in light of the contentions raised by the defence, the learned trial Judge has in fact considered that the prosecution has examined three witnesses, who are witnesses present at the time when the raid was carried out. We have already discussed the evidence of PW-1 Gohil, PSI, who was the person, has received information when he was in police station and on getting information, he himself has verified with informant by visiting the place where the lady was selling narcotic substance. It is found from his evidence that information which he has received from the informant is at 11-00 AM. It is the contention of Mr. Buddhbhatti that if information, which the officer has received at 11-00 AM, there is nothing to suggest that he has noted down the said information which is must under the NDPS Act and further that even after the information which he has received, he has not informed about the information to his superior officer. It is a fact that it is the

case of the prosecution that information was received by Shri Gohil at 11-00 AM but at the same time, as found from the evidence of Shri Gohil PW-1 that after the information was received, he along with his informant visited the place of information personally and it is only thereafter, after returning to the police station, he has informed this information to one of the Police Officer and further that Vinayak Police Constable was deputed for securing presence of two panchas. Shri Gohil, PW-1 after getting information from the informant, when he verified that information is found to be true and it is found that as per the information, one lady while sitting there at the place, is dealing with narcotic substance, and accordingly in the raiding party, he has kept one lady police constable and the report to that effect is made by informing to Assistant Police Commissioner, Crime Branch, Ahmedabad. As per the entry at Sr. 8, which was noted down in the station diary at 15-00 hrs. this entry is at Ex. 8. The entry suggests that there is an information about the information of dealing with narcotic substance, for which, they are require to go for raid and for the purpose of raid, they have already informed the incharge superior officer about the secrete information and they proceeded with other members of the raid staff with panchas. So, Ex. 8 is a station diary entry made at 15-00 hrs. suggests that as per the information received, the information was conveyed to the Superior officer and the raiding members of the party had proceeded towards the place for raid. On seeing Ex. 9, it is true that there is no timing mentioned in the said document but there is a reference about the timing of proceeding by the raiding members of the party for raid and the entry to that effect has been reflected. It is clear that this information is submitted to the Assistant Commissioner of Police only in respect of the information that raiding members of the party has proceeded for raid. However, in Ex. 8, it is clear that Superior Officer were already informed about the secret information. Ex. 10 is the document, which shows that the appellant accused was informed about the fact that they have information that she is possessing narcotic substance and they want to carry out her search and whether at the time of search, she wants presence of any gazetted officer or magistrate, for which he can made arrangement and the said information was also conveyed to the appellant and the thumb impression was taken by the accused. Even the seizure memo was served on the accused which is at Ex.. 11 and there is a thumb impression of the appellant accused on the said document. As the appellant accused was arrested by the police under the NDPS Act, the information for arrest was also conveyed to

the husband of the appellant and there is a thumb impression of the appellant accused.

16. Ex. 12 is the arrested memo while Ex. 13 is the information conveyed to her husband Shri Rasid Ibrahim by the police and Rasid the husband of the accused has also signed the document. Ex. 14 is the panchanam in two parts, one is of printed form drawn at 15-00 hrs. on 8.5.1997 signed by both the panchas with PSI and the second part of the panchnama is prepared after the appellant accused was found at the place and after the search was carried out and the narcotic substance was recovered and the second part of the panchnama is completed on the very day. After the accused and muddamal were brought, it is Mr. Gohil has filed complaint, which is at Ex.15 and on the basis of the complaint of Shri Gohil, statements of other witnesses were recorded by the investigating officer, which we have discussed. The report about the Muddamal, which was recovered as per FSL is found to be a narcotic substance.

17. On examining the entire prosecution case and the evidence led before the trial Court and as found from the evidence of PW-1 Shri Gohil, which we have already discussed earlier that he is the officer, who has received the information from the informant on 8th May, 1997 about the lady, who is dealing in narcotic substance in the area mentioned as per the information. After receiving the said information, it is the case of Shri Gohil that he along with the informant had proceeded at the said place as per the information to confirm the genuineness of the information furnished by the informant and after vising the place, he had confirmed the information, which he has received from the informant that the lady was found dealing in narcotic substance and thereafter, he returned to the police station and made an arrangement to carry out the raid as per the information and he along with raiding members of the party have proceeded for raid at about 3-00 PM and the appellant accused was found selling narcotic substance while sitting on a cot under the tree having buff cut heir and wearing black shirt and kurta and duptta and from her possession, after search was carried out, 33 small packets of brown sugar were recovered along with currency notes of Rs.535=00. It is also found from the appellant that she is residing in the house by giving details and in spite of this information available to him, he has not taken any steps to carry out the search of the residential house of the appellant accused immediately thereafter. According to us, by not carrying out the search of the residential house of the appellant accused

immediately, is not proper and same can be considered as failure on his part, as if immediately search of the house of the accused is carried out, then, there is every possibility to find out large quantity of narcotic substance.

18. As found from the record and in light of the submissions made before us, in our view, large quantity of narcotic substance were recovered from the appellant accused and even while carrying out the search, raiding members of the party has followed all the required mandatory provisions of N.D.P.S. Act and on examining the order of conviction, in our view, the learned trial Judge has on proper appreciation of the evidence and in light of the defence of the accused, recorded conviction of the accused and accordingly, the order of conviction recorded by the learned trial Judge does not require any interference. Accordingly, present appeal filed by the appellant accused deserves to be dismissed. The order of conviction and sentence recorded by the learned Additional City Sessions Judge, Court No. 10, Ahmedabad against the accused for the offences under Sections 8 (C) read with Sections 21 and 22 of the N.D.P.S. Act while disposing of Sessions Case No. 173 of 1997 dated 17.3.1998 is hereby confirmed. The rest of the order passed by the learned trial Judge is hereby confirmed.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)
pallav